IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.447 OF 2006
IN
COMPANY PETITION NO.342 OF 2001

Non-Woven (I) Pvt.Ltd. and another — Applicant

versus

Gujarat Industrial Investment Corpn. Limited — Respondents

Mr.H.V.Chande for applicant.

Ms.Paya Gandhi i/by Shah & Sanghavi for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 29th June 2006

PC :

1. Heard Shri Chande for the applicants.

2. Learned advocate appearing for the respondent-original petitioners had sought an adjournment for filing reply on 15th June 2006. At her request the matter was adjourned to enable the original petitioner which is Gujarat Industrial Investment Corpn. Ltd. to file its reply.

3. When this application was called out today, once again the same request is made. I see no reason to adjourn the proceedings further. Application for adjournment refused.

4. In the affidavit in support it is pointed out that the company petition is filed on the basis that the applicant no.1 company is a guarantor of one Daga Fibres and Synthetic Limited. Said Daga Fibre and Synthetics Ltd. had taken loan from the original petitioner and the company gave corporate guarantee.

5. It is pointed out that proceedings are pending before the BIFR.. As far as present petition which is against guarantor is concerned, it is pointed out that the applicant no.1 had engaged an advocate at the hearing of company application, which was taken out in this petition. Applicant no.1’s advocate undertook to file Vakalatnama but he did not file the same. In these circumstances, when this company petition was placed before the Court, there was no appearance on behalf of first applicant and this Court proceeded to pass an ex-parte order of winding up.

6. It is pointed out that for the mistake of the advocate applicant no.1 company should not suffer. Similarly, it is contended that the petition would not be maintainable as well. The first applicant company contends that if an opportunity is given by this Court, it would satisfy this Court about issue of maintainability as also merits. In peculiar circumstances when the advocate for first applicant did not take necessary steps, the first applicant should not suffer. More so, when proceedings are of serious nature, namely, winding up.

7. In my view, sufficient cause is not made out for non appearance on the date fixed for hearing of this application. The application does not seem to be lacking in bona fides either. In these circumstances, Company Application is made absolute in terms of prayer clause (a). Company Application is restored to file for being heard in accordance with law and on merits. However, applicant to pay costs quantified at Rs.5,000/-.

(S.C.DHARMADHIKARI, J.)